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**HOUSE BILL 469**

**43RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 1998**

**INTRODUCED BY**

**J. PAUL TAYLOR**

**AN ACT**

**RELATING TO HEALTH CARE; ENACTING THE HOSPITAL SALE ACT;  
ESTABLISHING PROCEDURES AND CRITERIA FOR REVIEW AND APPROVAL  
OF HOSPITAL ACQUISITIONS BY THE ATTORNEY GENERAL; MAKING AN  
APPROPRIATION; DECLARING AN EMERGENCY.**

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:**

**Section 1. SHORT TITLE.--This act may be cited as the  
"Hospital Sale Act".**

**Section 2. DEFINITIONS.--As used in the Hospital Sale  
Act:**

**A. "acquire" or "acquisition" means the acquiring  
by a person of an interest in a hospital, whether by purchase,  
merger, lease, gift or otherwise, that results in a change of  
ownership or control of twenty percent or greater or that  
results in the acquiring person holding a fifty percent or**

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1 greater interest in the ownership or control of a hospital;

2 B. "hospital" means a general or acute care or  
3 specialty hospital licensed by the department of health;

4 C. "person" means an individual or other legal  
5 entity, including the state or a department, agency,  
6 institution or political subdivision of the state.

7 Section 3. ACQUISITIONS--APPLICATIONS--APPROVALS.--

8 A. No person shall acquire a hospital without  
9 first applying for and receiving the approval of the attorney  
10 general pursuant to the Hospital Sale Act.

11 B. Approval of the attorney general is not  
12 required for the acquisition of a hospital if the acquisition  
13 is a result of the:

- 14 (1) lease of a county hospital;
  - 15 (2) dissolution of a hospital district; or
  - 16 (3) merger of hospital districts or hospitals
- 17 of the state or a department, agency, institution or political  
18 subdivision of the state.

19 C. The acquisition application shall be submitted  
20 to the attorney general on forms provided by the attorney  
21 general and shall include the name of the seller, the name of  
22 the purchaser or other parties to the acquisition, the terms  
23 of the proposed agreement, the sale price, a copy of the  
24 acquisition agreement, a financial and economic analysis and  
25 report from an independent expert or consultant of the effect

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1 of the acquisition based on the criteria set forth in Section  
2 6 of the Hospital Sale Act and all other related documents. A  
3 copy of the application and copies of all additional related  
4 materials shall be submitted to the attorney general.

5 Applications and all related documents are public records.

6 D. A person not required to obtain approval for  
7 an acquisition described in Subsection B of this section shall  
8 notify the attorney general in writing at least thirty days  
9 before the acquisition. The notice shall briefly describe the  
10 impeding acquisition, including any change in ownership of  
11 tangible and intangible assets.

12 Section 4. APPLICATION--CONTENTS--TIME PERIODS--  
13 APPROVALS OR DISAPPROVALS. --

14 A. Within ten days after receipt of an  
15 application, the attorney general shall publish notice of the  
16 application in a newspaper of general circulation in the  
17 county where the hospital is located and shall notify by mail  
18 any person who has requested notice of the filing of  
19 applications. The notice shall state that an application has  
20 been received, state the names of the parties to the  
21 agreement, describe the contents of the application and state  
22 the date by which a person may submit written comments about  
23 the application to the attorney general.

24 B. Within sixty days after receiving an  
25 application, the attorney general shall review the application

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1 in accordance with the standards set forth in the Hospital  
2 Sale Act and shall:

3 (1) approve the acquisition, with or without  
4 any specific modifications; or

5 (2) disapprove the acquisition.

6 C. If during the review the attorney general  
7 determines that the application is incomplete, he may return  
8 the application to the applicant or may request additions or  
9 changes to the application. All deadlines are suspended  
10 during the time an application is incomplete.

11 D. The attorney general shall not make his  
12 decision subject to any condition or modification not directly  
13 related to criteria enumerated in Section 6 of the Hospital  
14 Sale Act, and any condition or modification shall bear a  
15 direct and rational relationship to the application under  
16 review.

17 Section 5. PUBLIC HEARING. --The attorney general shall  
18 hold a public hearing at which any person may file written  
19 comments and exhibits or appear and make a statement. The  
20 attorney general may subpoena additional information or  
21 witnesses, require and administer oaths, require sworn  
22 statements, take depositions and use related discovery  
23 procedures for purposes of the hearing and at any time prior  
24 to making a decision on the application. The hearing shall be  
25 held not later than forty days after receipt of an

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1 application. The hearing shall be held upon ten working days'  
2 notice, not including days the application is deemed  
3 incomplete.

4 Section 6. ATTORNEY GENERAL--APPROVAL CRITERIA. --

5 A. The attorney general shall approve the  
6 application unless he finds that the acquisition is not in the  
7 public interest or does not meet the requirements of the  
8 Hospital Sale Act. An acquisition is not in the public  
9 interest unless appropriate steps have been taken to safeguard  
10 the value of charitable assets and to ensure that any proceeds  
11 of the transaction are used for appropriate charitable health  
12 care purposes as provided in Paragraph (8) of Subsection B of  
13 this section.

14 B. In determining whether the acquisition meets  
15 the requirements of the Hospital Sale Act and is in the public  
16 interest, the attorney general shall consider:

17 (1) whether the acquisition is permitted by  
18 the Business Corporation Act, the Nonprofit Corporation Act  
19 and other laws of New Mexico governing public procurement,  
20 corporations, or nonprofit entities;

21 (2) whether the hospital exercised due  
22 diligence in deciding to sell, in selecting the purchaser and  
23 in negotiating the terms and conditions of the sale;

24 (3) the procedures used by the seller in  
25 making its decision, including whether appropriate expert

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1 assistance was used;

2 (4) whether conflicts of interest were  
3 disclosed, including conflicts of interest related to board  
4 members of, executives of and experts retained by the seller,  
5 purchaser or other parties to the acquisition;

6 (5) whether the seller will receive  
7 reasonable consideration and fair value for its assets. The  
8 attorney general may employ, at the seller's expense,  
9 reasonably necessary expert assistance in making this  
10 determination;

11 (6) whether public and charitable funds are  
12 placed at unreasonable risk, if the acquisition is financed in  
13 part by the seller;

14 (7) whether any management contract under the  
15 acquisition is for reasonable consideration and fair value;

16 (8) if the seller is a nonprofit entity,  
17 whether the sale proceeds will be used for appropriate public  
18 and charitable health care purposes consistent with the  
19 seller's original purpose or for the support and promotion of  
20 health care in the affected community and whether the proceeds  
21 will be controlled as public or charitable funds independent  
22 of the purchaser or parties to the acquisition;

23 (9) whether a right of first refusal has been  
24 retained to repurchase the assets by a successor corporation  
25 or foundation if the hospital is subsequently sold to,

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1 acquired by or merged with another entity;

2 (10) whether sufficient safeguards are  
3 included to ensure the affected community continued access to  
4 affordable and appropriate health care;

5 (11) whether the purchaser and parties to the  
6 acquisition have made a commitment to provide health care to  
7 the disadvantaged, the uninsured and the underinsured and to  
8 provide benefits to the affected community to promote health  
9 care. Activities and funding provided by the seller to  
10 provide such health care may be considered in evaluating  
11 compliance with this paragraph; and

12 (12) if health care providers will be offered  
13 the opportunity to invest in or own an interest in the  
14 purchaser or an entity related to the purchaser, whether  
15 procedures or safeguards are in place to avoid conflicts of  
16 interest in patient referral and the nature of the procedures  
17 or safeguards.

18 C. This section does not apply higher standards to  
19 hospitals covered by the provisions of the Hospital Sale Act  
20 than those applicable to hospitals not covered by the  
21 provisions of that act.

22 Section 7. ACQUISITION--FAILURE TO FULFILL OBLIGATIONS--  
23 REVOCATION OF LICENSE.--If the attorney general receives  
24 information indicating that the acquiring person is not  
25 fulfilling the commitment to the affected community pursuant

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1 to Section 6 of the Hospital Sale Act, the attorney general  
2 shall hold a hearing on ten working days' notice to the  
3 affected parties. If after the hearing, the attorney general  
4 determines that the information is true, he may institute  
5 proceedings to revoke the license issued to the purchaser.

6 Section 8. LICENSURE--DENIAL, SUSPENSION OR REVOCATION.--

7 No license to operate a hospital shall be issued or renewed by  
8 the attorney general and a license that has been issued shall  
9 be suspended or revoked if there is an acquisition of a  
10 hospital without first having received the approval of the  
11 attorney general pursuant to the Hospital Sale Act, if there is  
12 an acquisition of a hospital and there is a judicial  
13 determination that the acquisition is not in the public  
14 interest or if a licensed hospital is not fulfilling its  
15 commitment pursuant to Subsection 11 of Section 6 of the  
16 Hospital Sale Act.

17 Section 9. APPROPRIATION.--Twenty thousand dollars

18 (\$20,000) is appropriated from the general fund to the office  
19 of the attorney general for expenditure in fiscal year 1999 for  
20 the purpose of implementing and enforcing the Hospital Sale  
21 Act. Any unexpended or unencumbered balance remaining at the  
22 end of fiscal year 1999 shall revert to the general fund.

23 Section 10. EMERGENCY.--It is necessary for the public

24 peace, health and safety that this act take effect immediately.  
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